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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEFFREY BERK, et al.,

Plaintiffs,

vs.

COINBASE, INC., et al.,

Defendants.

Case No.: 18-cv-01364-VC

**THIRD JOINT CASE MANAGEMENT
STATEMENT**

Date: June 12, 2019

Time: 10:00 a.m.

Judge: Hon. Vince Chhabria

Ctrm: 4, 17th Floor

1 The parties jointly submit this Subsequent Case Management Statement in advance of
2 the upcoming June 12, 2019 Case Management Conference. The parties have previously
3 submitted a full Joint Case Management Statement, *see* Dkt. 28, as well as a supplemental
4 Second Joint Case Management Statement, *see* Dkt. 69. Pursuant to Local Rule 16-10(d), the
5 parties will focus this statement only on “progress or changes since the last statement was filed”
6 and “proposals for the remainder of the case development process.”

7 **1. Amendment of Pleadings**

8 Plaintiffs requested that in the event the Court dismisses the Second Amended Class
9 Action Complaint (“SAC”), they be granted leave to amend within 30 days.

10 Defendants do not believe that Plaintiffs need yet another opportunity to amend (they
11 have already filed three different versions of their complaint). However, if the Court denies
12 both of Defendants’ pending motions and is inclined to permit further amendment, Defendants
13 propose that the deadline for such amendment be fourteen days after the Court issues its order
14 on the motions.

15 **2. Discovery**

16 **A. Plaintiffs’ Position**

17 Plaintiffs served a set of requests for production of documents (the “First RFPs”) and
18 interrogatories (the “First Interrogatories”) on Defendants on May 10, 2018, and a second set of
19 requests for production of documents (the “Second RFPs”), and interrogatories (the “Second
20 Interrogatories”) on October 24, 2018. Defendants have responded and made limited document
21 productions. The parties have exchanged extensive correspondence concerning the adequacy of
22 Defendants’ responses to Plaintiffs’ discovery requests and have engaged in at least one
23 extensive telephonic meet and confer. Although the parties have agreed upon certain
24 compromises, Plaintiffs believe that certain responsive documents remain outstanding.
25 Plaintiffs intend to serve further discovery. If the parties cannot resolve any outstanding issues,
26 the parties will file a joint letter brief in accordance with the Court’s Standing Order for Civil
27 Cases (“Standing Order”).
28

B. Defendants' Position

Defendants have already gone to significant lengths to provide early discovery to Plaintiffs—including responses to no fewer than 27 RFPs and 12 interrogatories— even before Plaintiffs have settled on a theory of the case. However, as Plaintiffs have recognized, it does not make sense to conduct additional discovery, or to burden the Court with unnecessary discovery disputes, until the pending motions (to dismiss and to compel arbitration) have been resolved. As such, the parties have stipulated to a stay of all discovery pending resolution of those motions. *See* Dkt. 68 at 11–13 (“Plaintiffs will agree to forgo further discovery and to suspend any efforts at obtaining more discovery until the Court rules upon the Motions and the scope of the Action is clarified.”). That stipulation continues to make sense.

3. Class Actions

The parties address the issue of how and when a class will be certified in the Schedule below.

4. Settlement and ADR

The parties remain willing to discuss potential mediation or other forms of ADR after the resolution of the Motions.

5. Scheduling

A. Plaintiffs' Position

Plaintiffs' proposed schedule is attached hereto as Appendix A.

Defendants' statement below falsely represents that Plaintiffs “refused to cooperate” with Defendants' procedure for developing a schedule. Rather, Plaintiffs insisted on presenting a schedule in this CMS because the Court's rules require it. The only thing Plaintiffs refused to cooperate on was withholding proposed schedules from the Court at this juncture. Moreover, the schedule proposed by Plaintiffs is essentially the same schedule Defendants stipulated to previously [Dkt. No. 40], just bumped out by about 10 months to reflect the time spent on the last round of motions.

B. Defendants' Position

When the parties submitted a case management statement four weeks ago, plaintiffs proposed the following language: "The parties believe that it is premature to set forth any schedule at this stage of the Action until resolution of the [pending motions to dismiss and to compel arbitration]." Defendants agreed. *See* Dkt. 68 at ¶¶ 8, 11. Since then, Plaintiffs appear to have had a change of heart and have demanded that the parties propose case schedules even before the Court rules on the pending motions. Defendants believe that it would make more sense for the parties to meet and confer about a schedule—and submit a joint proposal—within 14 days of any order on the pending motions. Plaintiffs have refused to cooperate with this proposal. As a result, Defendants now submit a proposed case schedule, which is attached hereto as Appendix B.

On a separate note, Plaintiffs' claim that Defendants previously stipulated to a similar version of their proposed schedule is incorrect. As merely one example, Defendants did not and would not stipulate to a proposed schedule that extends fact discovery out beyond expert discovery, or which allows the parties to continue conducting "class-certification discovery" even after Defendants oppose any class-certification motion.

DATED: June 5, 2019

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DATED: June 5, 2019

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ATTESTATION

I hereby attest that I have obtained concurrence in the filing of this document from each of the other persons whose signatures are indicated by a conformed signature (/S/) within this e-filed document.

DATED: June 5, 2019

/s/ Robert S. Green

Robert S. Green

APPENDIX A: PLAINTIFFS' PROPOSED SCHEDULE

Event	Date/Deadline
Deadline to Amend Pleadings	August 22, 2019
Merits Experts: Opening Reports	April 6, 2020
Rebuttal Reports	May 4, 2020
Merits Expert Discovery Completed by	May 25, 2020
Fact Discovery Cutoff	June 15, 2020
Deadline to File Dispositive Motions	June 22, 2020
Deadline to File Oppositions to Dispositive Motions	July 13, 2020
Deadline to File Replies ISO Dispositive Motions	July 27, 2020
Hearing on Dispositive Motions	August 13, 2020 at 10 a.m.
Deadline to File Class Cert. Motion	August 24, 2020
Deadline to File Opposition to Class Cert. Motion	September 14, 2020
Class Cert. Expert Discovery Cutoff	September 28, 2020
Deadline to File Reply ISO Class Cert. Motion	
Hearing on Class Certification Motion	October 8, 2020 at 10 a.m.
Pretrial Conference	January 18, 2021 at 1:30 p.m.
Trial	February 16, 2021

APPENDIX B: DEFENDANTS' PROPOSED SCHEDULE

Event	Date/Deadline
Deadline to Amend Pleadings	+ 14 days after order on Motions
All Fact Discovery Completed by	December 13, 2019
Experts: Opening reports on issues on which party bears the burden of proof	February 21, 2020
Experts: Rebuttal Reports	March 13, 2020
All Expert Discovery Completed by	April 3, 2020
Deadline to File Class Cert. Motion	April 30, 2020
Deadline to File Opposition to Class Cert. Motion	May 28, 2020
Deadline to File Reply ISO Class Cert. Motion	June 11, 2020
Hearing on Class Certification Motion	June 25, 2020 at 10am
Deadline to File Dispositive Motions	July 30, 2020
Deadline to File Oppositions to Dispositive Motions	August 20, 2020
Deadline to File Replies ISO Dispositive Motions	September 3, 2020
Hearing on Dispositive Motions	September 17, 2020 at 10am
<u>Joint Pretrial Conference Statement</u>	<u>December 18, 2020</u>
Pretrial Conference	January 18, 2021 at 1:30pm
Trial	February 16, 2021